

(1997) 11 MAD CK 0060

In the Madras High Court

Case No : Tax Case (Revision) No. 1429 of 1985

State of Tamil Nadu

APPELLANT

Vs

Andaman Timber Industries Ltd.

RESPONDENT

Date of Decision : 10-11-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 2, 3, 6A, 8, 9
Constitution of India, 1950 — Article 142

Citation : (1997) 11 MAD CK 0060

Hon'ble Judges : M.S. Janarthanam, J;K.P. Sivasubramaniam, J

Bench : Division Bench

Judgement

Janarthanam, J.—The registered head office of the assessee-dealers - a Branch - Andaman Timber Industries Limited, 336, Walltax Road,

Madras-1, is located at Calcutta. The head office, apart from its branch at Madras, also has branches at Bombay, Delhi, etc. Their factory is in

Port Blair in Andaman. The goods - plywood - it is said, are manufactured at the factory at Port Blair and sent by ship to its various branches.

2. The assessee-dealers reported inter-State sales of plywood relating to the assessment year 1981-82 to the tune of Rs. 12,34,185.99 under the

Central Sales Tax Act, 1956 (Act No. 74 of 1956, for short "the CSTA"). They also claimed "stock transfer" of plywood, as per the instructions

of the head office to the tune of Rs. 97,61,269.99. It appears, they also filed "F" forms, as relatable to branch transfers.

3. Their place of business it appears, was inspected by the officers of the Enforcement Wing, Madras, and certain incriminating documents were

recovered. The incriminating documents so recovered mainly consisted of letters giving instructions to the branches. The said letters and "stock

transfer"" challans contained materials pointing out movement of plywoods on inter-State in order to satisfy the pre-existing contracts of sales with customers in the delivery States. To put it otherwise, the initials of the buyers in the delivery States were traceable to the said documents. For such stock transfer"", the head office at Calcutta prepared invoices and those invoices also showed the abbreviated names of the parties, to whom the goods were intended. The invoices so prepared did not at all indicate the actual price for which the goods were sold to the buyers of the other States. Yet, in the said invoices, the extent of the trade discount to be given had been indicated. No ""C"" forms were also filed in respect of those transactions.

4. The assessing officer, namely, the Deputy Commercial Tax Officer, Peddunaickenpet South, Madras-1, in such a situation, proposed to include the said transaction to the tune of Rs. 20,11,762.19 to be included in inter-State sales chargeable at ten per cent, along with inter-State sales to the tune of Rs. 12,34,185.99 already reported.

5. The assessing officer issued a pre-assessment notice indicating such proposal and inviting objections, if any, to the same.

6. The assessee-dealers filed their objections, inter alia, stating that the amount taken for the purpose of arriving at the figure of Rs. 20,11,762.19

is the listed price plus excise duty, etc., from which discount was allowed to the ultimate buyers in the other States and the net amount realised as

the price of the goods is only Rs. 13,87,383 and that this amount included two despatches relating to two consignment agents, one relating to

Dokania Enterprises and another relating to Pushpanjali Enterprises, involving Rs. 2,31,030.87 and they had sold the goods on assessee's behalf

and rendered accounts for the sales effected by them. Therefore, those two despatches cannot at all be construed as ""inter-State sales"". Thus, the

sum and substance of the objections filed by the assessee is to the effect that even at the worst, they can be assessed to tax on the footing of inter-

State sales only to the tune of Rs. 13,87,383 minus Rs. 2,31,030.87 = Rs. 11,56,353.13 at the appropriate rate.

7. The assessing officer, overruling the objections as devoid of merits, confirmed the proposals notified to him in his proceedings CST No.

4738/X/81-82 dated July 25, 1983.

8. The aggrieved assessee-dealers filed appeal in CST No. 152/83 before the Appellate Assistant Commissioner (CT) II, Madras-1 (for short the AAC").

9. In the appeal so filed, the assessee-dealers contended that the entirety of the transactions to the tune of Rs. 20,11,762.19 is relatable to "branch transfers" and consequently not assessable to tax under the CSTA. They further appeared to have claimed that in respect of the transactions to the tune of Rs. 2,148.09, they are entitled to concessional rate of tax at four per cent and not at ten per cent.

10. The said AAC granted relief to the assessee-dealers to the tune of Rs. 17,80,731.32 holding that the transactions covering the said amount are branch transfers" and consequently, the same is not exigible to tax. He, however, held that the transactions to the tune of Rs. 2,31,030.87 are inter-State sales exigible to tax at ten per cent, in the absence of production of any "C" forms for those transactions. He further held that the assessee-dealers are not entitled to concessional rate of levy on the transactions to the tune of Rs. 2,148.09, in the absence of production of "C forms and consequently, the said transaction is exigible to tax at ten per cent. He thus disposed of the appeal by certain modifications, as indicated above, by his order dated October 12, 1983.

11. (a) The assessee-dealers filed further appeal in T.A. No. 1884 of 1983 on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Madras-104 (for short "the Tribunal").

(b) The Revenue also filed enhancement petition in T.M.P. No. 356 of 1984 praying for restoration of the order of the assessing officer relating to a turnover to the tune of Rs. 17,80,731.32.

12. Though the assessee-dealers challenged the levy of tax at ten per cent as relatable to the turnover to the tune of Rs. 2,148.09, yet, during the course of arguments, the assessee-dealers did not press the claim so made for the reason, that they have not filed "C" forms in proof of the claim.

13. The Tribunal, after taking into consideration the relevant materials placed on record and of course, after hearing the representatives on either side, held that the entirety of the transactions covering a turnover of Rs. 20,11,762.19 is a "branch transfer" and consequently, not exigible to tax.

The Tribunal, so holding, partly allowed the appeal and dismissed the

enhancement petition.

14. Aggrieved by the said order, the present action - Tax Case (Revision No. 1429 of 1985 - had been restored to by the Revenue.

15. From the pith and submissions of Mr. R. Mahadevan, learned Government Advocate (Taxes) representing the Revenue and Mr. N. Inbarajan,

learned counsel appearing for the assessee-dealers, the points, as below, emerge for consideration :

(1) Whether it is legally permissible for this Court to interfere with the concurrent factual findings by the authorities below, namely, AAC and the

Tribunal, as relatable to the transactions covering a turnover of Rs. 17,80,731.32, treating the same as ""branch transfer"" and consequently, not exigible to tax ?

(2) The answer to the question as above (point No. 1 supra), if found against the assessee-dealers, whether, on the facts and in the circumstances

of the case, it is legally permissible to treat the transactions covering a turnover of Rs. 17,80,731.32 as ""inter-State sales"" exigible to tax at the

appropriate rate and not liable to be treated as ""stock transfer to branches"" and consequently not exigible to tax at all ?

16. Point Nos. 1 and 2 : The issues covered under point Nos. 1 and 2 are inextricably connected together in such a way as is not possible to enter

into arena of discussion separately in rather a bid to give a finding on such questions independently. If we consider such questions independently,

we rather feel, that there will be jarring repetition of ideas in such process and in order to avoid the same, we are impelled to group and consider

them together.

17. No doubt true it is, this Court sitting in revision, cannot at all normally be expected to interfere with the concurrent findings of fact by the

authorities below. But, that does not mean that this Court has no power at all to interfere with such findings in all eventualities and all circumstances

and situations. There may, however, be exceptional cases warranting interference by this Court. Such interference will be called for in cases where

perverse findings of fact had been recorded by the authorities below tilting the conscience of this Court in a bid to render justice according to law.

A finding must always be based upon certain material facts. A finding, not based upon any material fact, is not finding at all in the eye of law and

such a finding cannot at all be called, anything other than the one having its edifice based on perversity. There may be other cases, wherein a required legal fitment is not given to the factual matrix of the case. Such a finding is the resultant product of erroneous application of law. Such a finding, if allowed to stand, is nothing but travesty of justice. Therefore, the court sitting in revision necessarily possesses the power to interfere with the concurrent findings of fact, in such a situation.

18. The instant case is a glaring example of erroneous application of law to its factual matrix. The moot question falling for determination is as to whether the facts and circumstances of the case relatable to the transactions covering a turnover of Rs. 17,80,731.32 represent ""stock transfer to branches"" for open market sale and therefore not exigible to tax under the CSTA or represent ""inter-State sales"" exigible to tax at the appropriate rate thereof.

19. In finding an answer to the tangle so posed, the authorities below, we rather feel, committed a serious error of law in giving a legal fitment to the factual matrix of the case on hand. It is not as if the questions posed in the instant case did not at all arise for consideration before the superior courts of jurisdiction - apex Court and High Courts - at any antecedent point of time and the plain fact is that such a question did arise before court for consideration and decisions rendered. Some of the decisions so rendered, if referred to here, we rather feel, we would be able to find out an answer to the knotty questions so posed for consideration by untying the knot, with ease and grace and without any difficulty whatever.

20. (i) Balabhagas Hulaschand Vs. State of Orissa, , the appellant was a firm dealing in buying and selling jute and had its head office at Calcutta.

The appellant entered into a contract of sale with certain Calcutta firms by which the appellant agreed to sell raw jute of certain specifications of weight and quality to the buyers. At the time, when the contract of sale was entered into, the raw jute was not in existence as it was being grown.

After the goods were ready, the appellant booked the goods in bags in the names of the buyers from certain railway stations in Orissa to the railway sidings of the buyers at Calcutta. The goods, on arrival in the buyers' railway siding at Calcutta, were inspected by the buyers and as they were found to be in accordance with the specifications mentioned in the contract

of sale, they were accepted.

(a) The High Court held that the sales were inter-State sales and were, therefore, liable to be taxed u/s 3(a) of the CSTA.

(b) The matter had been agitated by way of appeal to the Supreme Court, which took into consideration of the meaning of the word "sale

appearing in section 2(g) as also in section 3(a) of the CSTA, besides considering the question as to when a sale can be said to take place in the

course of inter-State trade or commerce.

(c) The word "sale" appearing in section 2(g), as also in section 3(a) of the CSTA, the Supreme Court, said, includes an agreement to sell also

provided that agreement contains a stipulation regarding passing of the property. But, in order to determine whether a sale has taken place in the

course of inter-State trade or commerce, the matter has to be approached only after a concluded sale has taken place, because unless the sale

takes place, or, in other words, the agreement to sell merges into a concluded sale, the question regarding the application of the provisions of the

CSTA does not arise at all, because the tax is on sale and not on an agreement to sell or a forward contract.

(d) Before a sale can be said to take place in the course of inter-State trade or commerce, the following conditions must be satisfied :

(i) There is an agreement to sell which contains a stipulation express or implied regarding the movement of the goods from one State to another :

(ii) In pursuance of that agreement, the goods in fact moved from one State to another; and

(iii) Ultimately, a concluded sale took place in the State where the goods were sent and that State is different from the State from which the goods

moved.

(e) If these conditions are satisfied then by virtue of section 9 of the CSTA, it is the State from which the goods moved which will be competent to

levy the tax under the provisions thereof. In such a case, the question whether the agreement to sell is in respect of ascertained or unascertained

goods, or existing or future goods, makes no difference whatsoever so far as the interpretation of section 3(a) of the CSTA is concerned.

(f) So saying, the Supreme Court ultimately held that even though the sale took place at Calcutta, since the movement of goods preceded the sale

in pursuance of the contract of sale, which contained a clear stipulation that the goods were to move from Orissa to Calcutta, the movement of goods was occasioned by the sale itself and it was, therefore, taxable u/s 3(a) of the CSTA.

(ii) In English Electric Co. of India Ltd. and Another Vs. The Deputy Commercial Tax Officer and Others, , the appellant-company, having its registered office at Calcutta and branches at Bombay, Delhi, Madras and Lucknow, had its main factory at Madras, where the appellant manufactured certain goods.

(a) A Bombay buyer wrote to the Bombay branch of the appellant asking for lowest quotation of the goods. The Bombay branch wrote to the Madras branch giving all the specifications and stating that the goods were for the Bombay buyer. The Madras branch in reply referred to the order of the Bombay buyer, gave the required particulars and mentioned that the price was f.o.r. Madras.

(b) The Bombay branch thereafter wrote to the Bombay buyer reproducing all the particulars, conditions of sale and mode of despatch as stated by the Madras branch and further stated that the goods would be manufactured at the Madras branch factory. The Bombay buyer placed in order with the Bombay branch accepting all the terms and conditions. The Bombay branch placed an indent order addressed to the Madras bench giving all the particulars, the buyer's name, order number and date.

(c) On receipt of an invoice from the Madras branch, the Bombay branch wrote to the Bombay buyer that some of the goods against the order were ready for despatch and asked for details of despatch instructions. The Bombay branch thereafter wrote to the Madras branch giving despatch instructions and stating that the railway receipts and other documents should be sent to them for disposal. The Madras branch despatched the goods to Bombay by goods train and gave intimation to the Bombay branch. The goods were delivered to the Bombay buyer through clearing agents and the insurance charges were collected from the Bombay buyer.

(d) The appellant contended that there was no inter-State sale and that the sale was at Bombay, inasmuch as the Bombay buyer placed the firm order at Bombay, payment was made at Bombay, railway receipt was in the

name of the Bombay branch, the goods were delivered at Bombay

and there was no privity of contract between the Madras branch and the Bombay buyer.

(e) The Madras High Court held that the sale was an inter-State falling u/s 3(a) of the CSTA.

(f) The matter was agitated further by filing an appeal before the Supreme Court.

(g) The Supreme Court said that when the movement of goods from one State to another is an incident of the contract of sale, it is a sale in the

course of inter-State trade falling u/s 3(a) of the CSTA. It does not matter in which State the property in the goods passes. What is decisive is

whether the sale is one which occasions the movement of goods from one State to another. The inter-State movement must be the result of a

covenant, express or implied, in the contract of sale or an incident of the contract. It is not necessary that the sale must precede the inter-State

movement in order that the sale may be deemed to have occasioned such movement. It is also not necessary for a sale to be deemed to have taken

place in the course of inter-State trade or commerce, that the covenant regarding inter-State movement must be specified in the contract itself. It

will be enough if the movement is in pursuance of and incidental to the contract of sale.

(h) So saying, the Supreme Court held that the appellant was one entity and it carried on business at different branches. Branches are not

independent and separate entities. They are different agencies. The contract of sale was between the appellant and the Bombay buyer. When a

branch of company forwards a buyer's order to the principal factory of the company and instructs them to despatch the goods direct to the buyer

and the goods are sent to the buyer under those instructions it would not be a sale between the factory and its branch. The steps taken from the

beginning to the end by the Bombay branch in co-ordination with the Madras factory showed that the Bombay branch was merely acting as the

intermediary between the Madras factory and the buyer and that it was the Madras factory which pursuant to the covenant in the contract of sale

caused the movement of goods from Madras to Bombay.

(i) The inter-State movement of the goods from Madras to Bombay was the result of the contract of sale and the fact that the contract emanated

from correspondence which passed between the Bombay branch and the company could not make any difference. The sale was therefore liable to be taxed u/s 3(a) of the CSTA.

(j) Thus, the decision of this Court was affirmed by the Supreme Court.

(iii) In Union of India (UOI) and Another Vs. K.G. Khosla and Co. Ltd. and Others, , the respondent-company having its head office in the Union

Territory of Delhi, carried on business of manufacturing air-compressors and garage equipment in its factory at Faridabad in Haryana State.

Orders for the supply of goods from various parties were received by the respondent at its head office in Delhi. The head office drew out a

production programme and advised the factory to manufacture the goods in accordance therewith. After the goods were so manufactured in the

factory, they were brought to the head office in Delhi and despatched from the head office to various customers whether outside or inside Delhi.

The bills were sent from the head office and the price of the goods were also received there.

(a) The question that arose for decision was whether the sales made by the respondent were made at Faridabad in the course of inter-State trade

or whether they were intra-State sales effected within the Union Territory of Delhi.

(b) The High Court held that the sales were inter-State sales assessable to sales tax under the CSTA by the sales tax authorities of Faridabad.

(c) On appeal, the Supreme Court held :

(i) that if a contract of a sale contains a stipulation for the movement of the goods from one State to another, the sale would certainly be an inter-

State sale. But for the purposes of section 3(a) of the CSTA, it is not necessary that the contract of sale must itself provide for and cause the

movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of the contract of sale. A sale can

be an inter-State sale, even if the contract of sale does not itself provide for the movement of goods from one State to another but such movement

is the result of a covenant in the contract of sale or is an incident of that contract; and

(ii) that goods conforming to agreed specifications having been manufactured at Faridabad, the contracts of sale could be performed by the

respondent only by the movement of the goods from Faridabad with the intention of delivering them to the purchasers. Although the contracts of

sale did not require or provide that the goods should be moved from Faridabad to Delhi, the movement of the goods was occasioned from

Faridabad to Delhi, as a result or incident of the contracts of sale made in Delhi. The High Court was, therefore, right in holding that the sales were

inter-State sales and that the turnover of such sales was assessable to sales tax under the CSTA by the sales tax authorities of Faridabad.

(d) The question as regards the nature of the sale, that is, whether it is an inter-State sale or an intra-State sale, does not depend upon the

circumstances as to in which State the property in the goods passes. It may pass in either State and yet the sale can be an inter-State sale.

(iv) In *South India Viscose Ltd. Vs. State of Tamil Nadu*, , to regulate the scheme of allotment of indigenous art silk yarn at concessional rates to

weavers, a distribution committee was constituted by the Government, which made allotment to different weavers by issuing allotment cards.

Under the terms of the card, the yarn manufacturer had to offer to the allottee rayon yarn within seven days of the date of the allocation without

waiting for the allottee to approach him. A firm contract for the supply of yarn had to be completed within twenty-one days from the date of

allocation. There were provisions dealing with the case where a firm commitment was not entered into.

(a) The appellant, a registered dealer carrying on business in Coimbatore in Tamil Nadu, had supplied art silk yarn to certain allotment card-

holders in Maharashtra and Gujarat. The appellant contended that it had an agent in Bombay through whom delivery of the goods was effected

and that therefore the sales were not inter-State sales.

(b) The Supreme Court said that if there is a conceivable link between a contract of sale and the movement of goods from one State to another in

order to discharge the obligation under the contract of sale, the interposition of an agent of the seller, who may temporarily intercept the movement

will not alter the inter-State character of the sale.

(c) So saying, the Supreme Court ultimately held on facts, that the communication by the allottee within twenty-one days of the date of the

allotment card, of his desire to purchase the goods, brought into existence a

contract of sale directly between the appellant and the buyer. The goods were sent pursuant to that contract of sale. The interposition at a later stage of the selling agent who acted on behalf of the appellant in the preparation of the invoice and the delivery of the goods did not alter the true character of the sale as the selling agent was just a conduit pipe. The goods having been despatched from one State to another pursuant to a contract of sale which came into existence directly between the appellant and the buyer, the sales effected by the appellant were inter-State sales.

(v) in *Chesebrough Pond's Inc. Vs. The State of Tamil Nadu*, , the assessee was a manufacturer and dealer in face powder, having its head office and manufacturing unit at Madras and branches at Bombay and other places. A department of the Government of India, known as Canteen Stores Department, which was part of the Defence Ministry, placed orders for the purchase of the goods manufactured by the assessee with the Bombay branch of the assessee.

(a) The orders when received by the Bombay branch, were forwarded by that branch to the head office at Madras. The head office then consigned the goods by lorry to the Bombay branch warehouse, mentioning in the lorry way-bill that the goods had been despatched against orders placed by the Canteen Stores Department.

(b) When the goods reached Bombay, they were cleared by the Bombay branch and immediately supplied to the Canteen Stores Department, after raising invoices in terms of the orders already placed.

(c) The assessing authorities as well as the Tribunal rejected the assessee's contention that the transactions could not be regarded as sales in the course of inter-State trade, chargeable to tax u/s 3(a) of the CSTA.

(d) On revision, the assessee contended that the goods moved from Madras to Bombay in what was described as stock transfers and that the Canteen Stores Department placed the orders not with the head office at Madras direct, but only with the Bombay branch.

(e) This Court, in such context, held :

(i) that if all that the stock transfers evidenced was displacement of goods from a head office to a branch, then there would be no difficulty at all in accepting the contention that there was no inter-State sale for the simple reason

that the transfers from Madras to Bombay involved no sale at all; but as found by the Tribunal, the stock transfer notes relied on by the assessee themselves clearly referred to the particular orders placed by the Canteen Stores Department with the Bombay branch of the assessee against which the goods were sent in the particular consignment of consignments, by lorry. It was, therefore, not accurate to describe the movements of the goods as inter-office, or non-sale consignments from the head office to a branch :

(ii) that the fact that the head office at Madras did not despatch the goods direct to the Canteen Stores Department, which placed the orders, but sent the goods to the Bombay branch from where the goods ultimately found their way to the purchaser did not make any difference to the application of section 3(a) of the CSTA. It did not matter how many stop-overs were there in the delivery State before the goods reached the purchaser's hands. All that mattered was that the movement of the goods was in pursuance of the contract of sale or as a necessary incident to the sale itself; and

(iii) that, therefore, the transaction between the assessee and the Canteen Stores Department, Bombay, was an inter-State sale liable to tax.

(vi) In *The State of Tamil Nadu Vs. Hercules Rubber Co.*, the assessee manufactured certain goods in Madras and had their branch office at

Vijayawada in Andhra Pradesh. The various purchasers in Andhra Pradesh placed orders with the assessee's branch office there. Subsequently at

the instance of the branch office, goods were despatched by the assessee to the branch office. The branch office took those into their stock and

subsequently delivered them to its purchasers.

(a) On the question as to whether the transactions were in the nature of branch transfers or inter-State sales, this Court held that there was no

direct link between the assessee in Madras and the buyers in Andhra Pradesh. The contract of sale had been entered into between the assessee's

Andhra Pradesh branch and the local buyers. In view of the fact that there was no direct link between the assessee, who was in Madras and the

dealers of Andhra Pradesh, the despatch of the goods could not be taken to have been occasioned by the contract of sale entered into by the

assessee's branch with the local buyers. Therefore, the transactions were only in

the nature of branch transfers and not inter-State sales. Even if the assessee had put markings on the consignments which had been sent by lorries in the names of the purchasers, that was not sufficient to bring about a contract of sale between the assessee and the ultimate buyer in Andhra Pradesh.

(vii) In *Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others*, , the petitioner-company, engaged in the

manufacture and sale of stampings and laminations made out of steel sheets, which were utilised as raw material for making electric motors,

transformers, etc., had its registered office and its factory at Hyderabad. Its branches at Bombay, Calcutta and Coimbatore were mainly engaged

in effecting sales and looking after sales promotion and liaison work. Those branches received orders from customers within and outside their

respective States for the supply of goods conforming to definite specifications and drawings and advised the registered office at Hyderabad. The

company manufactured the goods according to the designs and specifications supplied by customers at its factory at Hyderabad and despatched

them to the respective branches by way of transfer of stock. Such goods were booked to ""self"" and sent by lorries. The goods received by the

branches were entered in the stock accounts of the branches and kept in stock for ultimate delivery to the customers.

(a) On the goods reaching the branches, they were inspected by the customers and accepted by them where the customers were local parties.

Where the customers were outside the State the branch despatched the goods to them. The branches raised the bills and received the sale price.

They also furnished from ""F"" to the registered office at Hyderabad u/s 6-A of the CSTA, in the case of stock transfers to the branches.

(b) The petitioner-company was assessed to State sales tax in Maharashtra, West Bengal and Tamil Nadu in respect of those goods. The

petitioner claimed that there was only a transfer of stock from Hyderabad to the branches outside the State of Andhra Pradesh and that the sales

effected to the customers by the branches were local sales in the respective States.

(c) The Commercial Tax Officer, Hyderabad, held the sales to be sales in the course of inter-State trade and made an assessment accordingly for

the year 1979-80 and also issued notices for reopening the assessments for the two earlier years 1977-78 and 1978-79 to include such sales.

(d) The petitioner-company filed a writ petition in the Supreme Court claiming that the sales were not sales in the course of inter-State trade and

praying that, in the event of the transactions being held to be inter-State sales, the petitioner be permitted to avail of the concessional rate envisaged

by section 8(1) read with section 8(4) of the CSTA; and that in the alternative, the assessments to local sales tax be quashed in so far as they

included the turnover of the stock transferred by the registered office to the branches.

(c) In that context, the Supreme Court held :

(i) that even if the customer placed an order with the branch office and the branch office communicated the terms and specifications of the order to

registered office and the branch office itself was concerned with despatching, billing and receiving of the sale price, the order placed by the

customer was an order placed with the company, and for the purpose of fulfilling that order, the manufactured goods commenced their journey

from the registered office in the State of Andhra Pradesh to the branch outside the State for delivery of the goods to the customer. Both the

registered office and the branch office were officers of the same company; they did not possess separate juridical personalities. The movement of

the goods from the registered office at Hyderabad was occasioned by the order placed by the customer and was an incident of the contract, and

therefore, from the very beginning from Hyderabad all the way until delivery to the customer it was an inter-State movement. The sale transactions

were inter-State sales u/s 3(a) of the CSTA; and

(ii) that a reasonable opportunity should be given to the petitioner-company to collect "C" forms from the customers for the purpose of obtaining

relief u/s 8(1) read with section 8(4), since the question whether the transactions could be treated as inter-State sales was all along in doubt and it

was only now that the question could be said to be resolved.

(f) The Supreme Court also granted liberty to the petitioner-company to apply to the assessing authority concerned for the deletion of such

transactions in the assessments under the State Acts, and directed that, if the application was made within two months, the assessing authority

should entertain it notwithstanding any period of limitation prescribed for such a proceeding.

(viii) In Cooperative Sugars (Chittur) Ltd. Vs. State of Tamil Nadu, , the appellant, a co-operative sugar factory, had its sugar factory in the Kerala State.

(a) As sufficient quantity of sugarcane was not available there, an understanding was arrived at between the appellant and the Governments of

Kerala and Tamil Nadu pursuant to which the appellant was permitted by a G.O. issued by the Tamil Nadu Government to draw sugarcane from

3,000 acres in Coimbatore and Pollachi taluks in Tamil nadu. Clause 5 of the said G.O. also provided that the appellant should pay sales tax to

Tamil Nadu on the sugarcane supplied on a specific basis.

(b) Pursuant to the G.O. the appellant opened its offices in Coimbatore and Pollachi and its inspectors from these offices visited the fields,

inspected the sugarcane and took delivery of the sugarcane from the farmers. They also arranged the transport of the sugarcane to the appellant's

factory in Kerala under cover of delivery note in form XX which showed the appellant itself as the seller and the buyer.

(c) The sales tax authorities held that the sale of sugarcane had taken place within Tamil Nadu and levied purchase tax under the Tamil Nadu

General Sales Tax Act, 1959 (Tamil Nadu Act No. 1 of 1959).

(d) The appellant claimed that the sale of sugarcane was an inter-State sale u/s 3(a) of the CSTA, and therefore, no tax could be imposed under

the local Act.

(e) Ultimately, the High Court held that the sale was not an inter-State sale, inasmuch as the sale took place in Tamil Nadu and the property in the

goods passed to the appellant in Tamil Nadu and the mere fact of transport of the sugarcane by the appellant from Tamil Nadu to Kerala as its

own goods made no difference; and it could not be said that the movement of the goods was a stipulation of or an incident of the contract of sale.

(f) On appeal, the Supreme Court held, reversing the decision of the High Court, that the purchases made by the appellant were inter-State

purchases. The appellant was permitted to purchase sugarcane in Coimbatore and Pollachi taluks only with a view to and exclusively for the

purpose of transporting it to its factory in Kerala. The movement of the goods

from Tamil Nadu to Kerala was occasioned by the sale by the farmers or by the purchase by the appellant, whichever way one looked at it. The movement of the sugarcane from Tamil Nadu to Kerala was an incident of, and was inextricably connected with, the sale/purchase. The purchase and transport were parts of one transaction and could not be dissociated. There was no break between the purchase and the movement of the goods to another State. It was immaterial whether the sale/purchase took place within Tamil Nadu or within Kerala. So long as the movement of the goods was an incident of the sale/purchase, it amounted to an inter-State sale/purchase. It was also not necessary that the contract of sale had to expressly provide for the movement of goods. It was sufficient if the movement of goods was implicit in the sale.

(g) It further held that the G.O. could not be relied upon by the State of Tamil Nadu for sustaining the levy of purchase tax under the local Act. A tax could be levied only by a statutory provision.

21. From the survey of the various decisions, as referred to above, two decisions emerged from this Court, while six decisions emerged from the apex Court. The two decisions emerging from this Court, namely, Chesebrough Pond's Inc. [1983] 52 STC 164 and Hercules Rubber Co.

[1983] 54 STC 85 were of the year 1983 (as reported). The former decision [1983] 52 STC 164 was earlier to the latter decision [1983] 54

STC 85, in the sense of the former decision having been rendered on 18th February, 1982, while the latter decision having been rendered on the 4th March, 1983. The attention of their Lordships in the latter decision was not drawn to the former decision.

22. The decision in the latter decision is directly in conflict with the former decision. This apart, the decision in the latter decision is contrary to the various decisions emerging from the apex Court, as referred to above. Therefore, the said decision cannot at all be stated to have laid down the correct law and therefore it is, reliance on such a decision cannot at all be placed by this Court.

A cursory perusal of the orders of the authorities below, namely, AAC and the Tribunal would reveal that strong reliance had been placed upon the latter decision, which is untenable for the reasons, as stated above.

23. Now, we shall divert our attention to the factual matrix of the instant case to

find out as to how the authorities below erred in recording the concurrent findings that the transactions covering a turnover of Rs. 17,80,731.32 were ""stock transfers to branches"" for open market sale and therefore not exigible to tax. No doubt true it is that there is no written contract between the assessee-dealers and the ultimate purchasers in the States of Bombay and Delhi covering the said sale transactions. The fact that there is no contract of sale between the assessee-dealers and the ultimate buyers cannot at all be said to be an insurmountable obstacle in the process of finding out the nature and character of the said transactions, if there are other relevant facts and circumstances besides the conduct of the parties, from which a legitimate inference could be reasonably drawn as to the existence of a contract of sale between the assessee-dealers and the ultimate buyers in various States, pursuant to which the movement of goods commenced from one State to another.

24. The assessee-dealers despatched the goods by stock transfer, much less to the branches at Bombay and Delhi, covered by the said transactions. While doing so, the assessee-dealers would say that as per the instructions from the head office, they put the specific initials of the ultimate buyers in the States of Bombay and Delhi to the various specified quantities of plywood of particular quality and description. There is no dispute at all that after the receipt of the goods at the branches at Delhi and Bombay, the ultimate buyers inspected the goods/plywoods and most of the buyers, after such inspection, whose initials were marked in the goods, apart from specifically being stated in the stock-transfer challans, as well as the letter despatched by the assessee-dealer, took delivery of the goods after negotiating the price. In the process of negotiation, the said buyers were able to get a sizable discount, as revealed from the records placed before us for our perusal and after the discount so made, the net price of goods covered by the transactions, inclusive of the excise duty amounted to Rs. 13,87,383 and this figure was and this figure was inclusive of the sale value of the two despatches made to their agents on consignment sales to the tune of Rs. 2,31,030.87. Of course, in some cases, where the ultimate buyers whose initials the despatch bore, as is getting reflected in the transfer challans and the letters issued by the assessee-dealers, refused to take delivery, those goods were sold to other buyers, who were willing

to purchase them.

25. An explanation would, of course, emanate from by the assessee-dealers that the despatch of the goods bearing the initials of the ultimate

buyers from other States could, by no stretch of imagination be construed to point out pre-existing contract of sale between the assessee-dealers

and the ultimate buyers, pursuant to which the goods moved from the State of Madras to other States, namely, Bombay and Delhi. The assessee-

dealers would further elucidate their stand that the markings of the initials on the despatch of the goods would indicate the potential buyers in the

States of Bombay and Delhi and this sort of an information was furnished by the head office at Calcutta. This sort of puerile explanation had

unfortunately been accepted not only by AAC, but also the Tribunal. How on earth, a head office at Calcutta could ever conceive of knowing the

addresses of the potential buyers in the States of Bombay and Delhi, until and unless the so-called potential buyers in the States of Bombay and

Delhi contacted previously the head office at Calcutta for the movement of the goods from Madras to Bombay and Delhi by giving due instructions

to branch office at Madras, pursuant to or incidental to a contract or covenant of sale. Such being the case, we are not far wrong in coming to the

conclusion that the authorities below, namely, AAC and the Tribunal as well had committed grievous error of law in construing the said transactions

as one of ""stock transfer to branches"" for open market sale and therefore, not exigible to tax.

26. Even if the said transactions are merely ""stock transfers to branches"" for open market sale, there is no need at all to put the initials of the

ultimate purchasers of the goods and most of the goods were being sold to those ultimate purchasers, whose initials appeared to bear in the

despatches of the said goods. In such state of affairs, the authorities below failed to legitimately infer, from such admitted facts, that the goods

moved from the State of Madras to the State of Bombay and Delhi, pursuant to an incident of contract or covenant of sale that came into existence

between the assessee-dealers and the ultimate buyers at Bombay and Delhi.

27. In these days, where scientific advancement relatable to communication facilities are available beyond one's imagination, commercial

transactions either inter-State or global level cannot at all be expected by written

communication or contract coming into existence prior to the movement of goods. We can take judicial notice of the fact that this is what had happened in the case on hand. It is well-nigh conceivable that the ultimate buyers at Bombay and Delhi could have availed of the latest communication facilities and contacted the head office at Calcutta for the movement of the required quantities of goods to be despatched from the branch office at Madras to them located at other States of Bombay and Delhi. The notification of the addresses of the ultimate buyers by the head office, through its branch office at Madras is not feasible or possible unless the ultimate buyers had previous contracts with the head office. We are therefore of the view that the concurrent findings recorded by AAC and the Tribunal as to the transactions covering to the tune of Rs. 17,80,731.32 representing ""stock transfer to its branches"" at Bombay and Delhi for open market sale deserve to be set aside. Consequently, point No. 1 is answered accordingly.

28. Point No. 2, in the way in which we have discussed the factual matrix, in the light of the principles above by the apex Court, in the various decisions referred to supra, being more or less a corollary to point No. 1, has to be necessarily answered against the assessee-dealers by stating that the transactions covering sales turnover to the tune of Rs. 13,87,383 and the two despatches involving Rs. 2,31,030.87 made of consignment sales through their agents, about which, no dispute is made by the Revenue, must have to be construed as inter-State sales exigible to tax under the CSTA.

29. At this stage, Mr. N. Inbarajan, learned counsel appearing for the assessee-dealers would intrude and state that a reasonable opportunity should be given to the assessee-dealers to collect ""C"" forms from their ultimate buyers at Bombay and Delhi for the purpose of obtaining the relief u/s 8(1) read with section 8(4) of the CSTA, since the question whether the transactions should be treated as inter-State sales had all along been in doubt and it is only now that the question should be sought to be resolved, as was the case in *Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others*, .

30. The prayer so made rather appears to be reasonable and accepting the argument so projected, the matter is remitted to the assessing officer,

with a direction that the assessee-dealers should be given a reasonable opportunity to collect "C" forms from their ultimate buyers at Bombay and

Delhi, as relatable to the transactions, covering the turnover of Rs. 13,87,383 minus Rs. 2,31,030.87 = Rs. 11,56,352.13 and in case, the

assessee-dealers produce the necessary and requisite "C" forms, the assessee-dealers may be given the relief of concessional rate of taxation to the

extent of the transactions covered by those "C" forms so produced.

31. Mr. N. Inbarajan, learned counsel appearing for the assessee-dealers would also state that the assessee-dealers may be granted liberty to

apply to the assessing authorities concerned for the deletion of such transactions in the assessment under the local law, inasmuch as they have paid

tax for the local sales effected by the branches. The prayer made in this regard, we rather feel, is incapable of being granted. The reasons are

rather obvious. The Supreme Court in *Sahney Steel and Press Works Limited and Another Vs. Commercial Tax Officer and Others*, issued such a

direction, obviously because of the power inhering in its favour under article 142 of the Constitution of India. Such a power is not there for us and

therefore it is, we rather feel, that we cannot grant the liberty asked for to apply for the deletion of the turnover covered by the transactions in the

State of Bombay and Delhi.

32. The tax Case (Revision) is thus disposed of. No costs.

33. Petitions allowed.